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PATENT
P57019

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

TAE-MING KANG *et al.*

Serial No.: 10/803,143

Examiner: PATEL, ASHOK

Filed: 18 March 2004

Art Unit: 2879

For: ORGANIC ELECTROLUMINESCENT DISPLAY AND METHOD FOR
FABRICATING THE SAME

PETITION UNDER 37 CFR §1.144

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant respectfully petitions from a finality of a restriction requirement of Paper No.

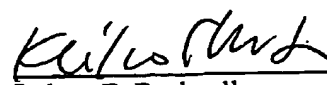
030106 mailed on 6 March 2006 and finalized on Paper No. 20060621 mailed 30 June 2006.

Folio: P57019
Date: 7/14/06
I.D.: REB/ML/fw

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For Robert E. Bushnell
Reg. No. 27,774

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STATEMENT OF FACTS

1. On 6 March 2006, a Restriction Requirement (Paper No. 030106) was mailed restricting method claims 7-15 and apparatus claims 1-6 and 16-48, and additionally imposing a requirement for election of species between Species I thru IV upon election of apparatus claims;
2. On 6 April 2006, Applicant filed a Amendment & Response under 37 C.F.R. 1.143 provisionally electing apparatus claims covered by claims 1-6 and 16-48, drawn to an organic EL display, and elected species I of claims 1-6 drawn to an organic EL device including: a specific combination of first electrode, upper and lower substrates, auxiliary layers, a pixel, organic EL layers, and second electrodes while traversing the restriction requirement;
3. On 30 June 2006, an Ex parte Quayle action was mailed (Paper No. 20060621) examining only claims 1-6 drawn to the elected group. In Paper No. 20060621, the Examiner acknowledged Applicant's 6 April 2006 37 C.F.R. 1.143 traversal but finalized the 6 March 2006 Restriction Requirement.

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In Paper No. 030106 mailed on 6 March 2006, the Examiner imposed a restriction between:

- Group I covered by claims 7-15, drawn to a method for making an organic EL display, classified in class 427, subclass 58; and
- Group II covered by claims 1-6 and 16-48, drawn to an organic EL display, classified in class 313, subclass 504.

In Paper No. 030106 mailed on 6 March 2006, the Examiner additionally imposed a requirement for election of species upon election of Group II, from among the following four “patentably distinct species of the claimed invention” identified by the Examiner:

- Species I: An organic EL device including: a specific combination of first electrode, upper and lower substrates, auxiliary layers, a pixel, organic EL layers, and second electrodes;
- Species II: An organic EL device including: at least a reflection plate;
- Species III: An organic EL device including: at least a waveguide;
- Species IV: An organic EL device including: a specific combination of upper and lower substrates, TFT an encapsulating junction region and auxiliary layer.

In an amendment filed on April 6, 2006, Applicant provisionally elected Group II covered by claims 1-6 and 16-48, drawn to an organic EL display, and elected species I of claims 1-6 and

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drawn to an organic EL device with traverse.

In an Ex Parte Quayle Office action mailed June 30, 2006 (Paper No. 20060621), the Examiner finalized the restriction requirement of March 6, 2006 without addressing to or responding to Applicant's 37 C.F.R. 1.143 traversal filed on April 6, 2006.

In Paper No. 030106, the Examiner restricted method claims 7 through 15 from the remaining claims because the Examiner believed that the product as claimed can be made by another materially different process. Applicant disagrees.

To support the Examiner's conclusion, the Examiner states on Page 2 of Paper No. 030106, "In the instant, the organic EL device of claim 16, 24, 31 or 37 does not require 1) auxiliary layers or 2) a pixel as recited in method claim 7." Applicant will now explain why 1) and 2) are not true, starting with 2) the pixel.

Regarding 2) the pixel defining layer, Applicant disagrees with the Examiner regarding the Examiner's assertion that the organic EL device as claimed in the apparatus claims does not require a pixel. To begin with, claim 7 never claims "a pixel". Claim 7 does however claim "a pixel defining layer". Assuming that this is what the Examiner is referring to on Page 2 of Paper No. 030106, Applicant submits that EL devices ordinarily have to have these layers to separate pixels from each other and to prevent cross talk between pixels. Even though this element is not always

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claimed, it still is an essential part of EL devices or any pixelated display device. Since “comprising” apparatus claims are not required to recite every element, Applicant disagrees with the Examiner’s assertion that organic EL devices do not need a pixel defining layer.

Regarding 1) the auxiliary layers and the Examiner’s assertion that because the auxiliary layer is not recited in each of the apparatus claims, the restriction between invention I and invention II is justified, Applicant submits the following. Applicant has elected the specie I drawn to claims 1-6. Each of the elected specie claims recites the auxiliary layer. Similarly, each of the elected specie claims recites the pixel defining layer. Therefore, Applicant submits that it was improper for the Examiner to allege that the contents of unelected and unexamined claims are the cause for a restriction between the elected group (specie 1 of invention II) and the method claims of invention I. Applicant submits that the Examiner can’t have his cake and eat it too. If the Examiner is going to use the contents of claims 16, 24, 31 or 37 against Applicant, then he must examine them along with claims 1-6. If the Examiner refuses to examine claims 16, 24, 31 and 37 along with elected claims 1-6, then he can not use the content of claims 16, 24, 31 and 37 as a reason not to examine method claims 7-15 along with elected apparatus claims 1-6.

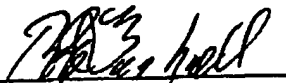
For this reason, Applicant submits that the Examiner must examine method claims 7 through 15 in the same patent application, in the same examination as claims 1-6 since the controverted claims 16, 24, 31 and 37 are not also being examined.

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Accordingly, the Commissioner is respectfully requested to:

- A. Insist that the restriction requirement of Paper No. 030106 be withdrawn;
- B. Examine all of Applicant's claims on the merits without further undue process;
- C. That the two month response time for the Ex Parte Quayle action mailed on June 30, 2006 (Paper No. 20060621) be extended at no cost to Applicant so that this petition can be timely resolved; and
- D. Grant such other and further relief as justice may require.

Respectfully submitted,


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